

HOUSE No. 799

By Mr. Kulik of Worthington, petition of Stephen Kulik and others relative to establishing Massachusetts land conservation incentives. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Stephen Kulik	Brian A. Joyce
Frank I. Smizik	Edward M. Augustus, Jr.
Ellen Story	Viriatu Manuel deMacedo
William C. Galvin	Eric Turkington
Christopher J. Donelan	Bradford Hill
Douglas W. Petersen	James B. Eldridge
Donald F. Humason, Jr.	Michael F. Rush
David Paul Linsky	Denise Provost
Frank M. Hynes	Benjamin B. Downing
Todd M. Smola	David L. Flynn
Harriett L. Stanley	Carl M. Sciortino, Jr.
Michael J. Rodrigues	Mark R. Pacheco
John W. Scibak	William N. Brownsberger
Denis E. Guyer	Tom Sannicandro
John D. Keenan	Susan C. Tucker
Lewis G. Evangelidis	Patricia A. Walrath
Timothy J. Toomey, Jr.	Theodore C. Speliotis
Robert L. Rice, Jr.	John A. Lepper
Richard T. Moore	Kay Khan
Barbara A. L'Italian	Anne M. Gobi
Louis L. Kafka	Bradley H. Jones, Jr.
William G. Greene, Jr.	Robert M. Kocera
Gale D. Candaras	Michael E. Festa
Cleon H. Turner	William Smitty Pignatelli
Thomas M. Stanley	Joyce A. Spiliotis
Paul J. P. Loscocco	Christopher N. Speranzo
Bruce E. Tarr	Steven J. D'Amico
Matthew C. Patrick	Geraldo Alicea
Peter V. Kocot	Alice K. Wolf
Christine E. Canavan	Jeffrey Davis Perry
Anthony J. Verga	Robert A. O'Leary
J. James Marzilli, Jr.	Martha M. Walz
William Lantigua	Alice Hanlon Peisch
James E. Timilty	Robert L. Hedlund
Stanley C. Rosenberg	Walter F. Timilty
Pamela P. Resor	Demetrius J. Atsalis
Michael R. Knapik	Stephen M. Brewer
David B. Sullivan	Jennifer M. Callahan

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO ESTABLISHING MASSACHUSETTS LAND CONSERVATION INCENTIVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act shall be known as the “Massachusetts
2 Land Conservation Incentives Act.”

1 SECTION 2. Purpose and Findings.

2 WHEREAS, the land and water in the Commonwealth of Massa-
3 chusetts provide a variety of important public benefits, including,
4 but not limited to, the protection of drinking water supplies, wildlife
5 habitat and biological diversity, agricultural and forestry production,
6 recreational opportunities, archaeological and historical resources, or
7 scenic and cultural values, but these privately-owned lands are being
8 permanently developed at an alarming rate;

9 WHEREAS, private landowners should be encouraged by the
10 Commonwealth to be stewards of their lands for the protection of
11 public benefits, including, but not limited to, drinking water sup-
12 plies, wildlife habitat and biological diversity, agricultural and
13 forestry production, recreational opportunities, archaeological and
14 historical resources, or scenic and cultural values;

15 WHEREAS, the Commonwealth should provide private
16 landowners with incentives to encourage and enhance the conserva-
17 tion of such lands.

1 SECTION 3. Definitions.

2 Section 6 of Chapter 62 of the General Laws is hereby amended
3 by adding the following new subsection:—

4 As used in this subsection the following words shall have the
5 following meanings:—

6 (a) “Bargain sale,” the sale of an interest in real property by a tax-
7 payer at a cost below appraised market value, when a portion of the
8 value of the interest in real property is a qualified donation, as such
9 terms are defined herein, and which meets the requirements of
10 Section 1011(b) of the Internal Revenue Code of 1986, as amended.

11 (b) “Certified land” or “certified lands,” an interest in real prop-
12 erty, as defined herein, the donation or bargain sale of which, as
13 defined herein, has first been determined by the secretary of environ-

14 mental affairs to be in the public interest for natural resource protec-
15 tion, including, but not limited to, drinking water supplies, wildlife
16 habitat and biological diversity, agricultural and forestry production,
17 recreational opportunities, archaeological and historical resources, or
18 scenic and cultural values. The secretary of environmental affairs
19 shall assure that all certified lands are protected in perpetuity.

20 (c) “Interest in real property,” any right in real property in the
21 Commonwealth of Massachusetts, with or without improvements
22 thereon, or water, including, but not limited to, fee simple, life
23 estate, restriction, easement, covenant, condition, partial interest,
24 remainder, future interest, lease, license, mineral right, riparian right,
25 or other interest or right in real property that may be conveyed con-
26 cerning the power to transfer property.

27 (d) “Public or Private Conservation Agency,” the Commonwealth
28 of Massachusetts, or any subdivision thereof, or any municipality, or
29 private nonprofit corporation organized for the purposes of land con-
30 servation, which is authorized to do business in the Commonwealth
31 of Massachusetts, and which has tax-exempt status as a nonprofit
32 charitable organization as described in Section 501(c)(3) of the
33 Internal Revenue Code of 1986, as amended.

34 (e) “Qualified donation,” a donation, or the donated portion of a
35 bargain sale, made in perpetuity of a fee interest in real property or a
36 less-than-fee interest in real property, including a conservation
37 restriction, agricultural preservation restriction or watershed preser-
38 vation restriction, pursuant to Chapter 184 of the general laws, pro-
39 vided that such less-than-fee interest meets the requirements of
40 Qualified Conservation Contributions under the Internal Revenue
41 Code of 1986, Section 170(h).

42 (f) “Taxpayer,” a taxpayer subject to the income tax under this
43 chapter.

1 SECTION 4. Tax Credit Available.

2 Section 6 of Chapter 62 of the general laws is hereby amended by
3 adding the following new subsection:—

4 (a) Land Conveyed for Conservation Purposes. A taxpayer
5 making a qualified donation of certified land to a public or private
6 conservation agency shall be allowed a credit against the taxes
7 imposed by this chapter. The credit shall be equal to 50 percent of
8 the fair market value of the qualified donation. The amount of the

9 credit that may be claimed by a taxpayer for each qualified donation
10 shall not exceed fifty thousand dollars.

11 (b) The fair market value of certified land shall be substantiated
12 by a Qualified Appraisal, as defined in United States Treasury Regu-
13 lation Section 1.170A-13(c)(3), and shall be prepared by a Qualified
14 Appraiser, as defined in United States Treasury Regulation Section
15 1.170A-13(c)(5). For any taxpayer to qualify for the credit provided
16 for in subsection (a) of this section, the taxpayer shall at the same
17 time as the taxpayer files a return for the taxable year in which the
18 credit is claimed, file with the department a summary of a Qualified
19 Appraisal, or if requested by said department, the taxpayer shall
20 submit the appraisal itself.

21 (c) In any one tax year the credit used may not exceed the amount
22 of tax liability otherwise owed by the taxpayer. The tax credit shall
23 be taken against the taxes imposed under this chapter and shall not
24 be refundable. Any amount of the credit that exceeds the tax due for
25 a taxable year may be carried forward by the taxpayer to any of the
26 10 subsequent tax years.

27 (d) The tax credits provided by this subsection shall apply to
28 transfers of interests in real property in taxable years beginning on or
29 after January 1, 2008 and consecutive taxable years thereafter.

30 (e) All or any tax credits issued in accordance with this section
31 may be in addition to any charitable deductions claimed on the tax-
32 payer's federal income tax return for the same qualified donations of
33 certified lands.

34 (f) Any taxpayer claiming a state income tax or excise tax credit
35 under this section may not claim an additional state income tax
36 credit or deduction during any one tax year for costs related to the
37 same interest in certified lands.

38 (g) All or any tax credits which arise under this section from the
39 qualified donation of certified land by a pass-through tax entity such
40 as a trust, estate, partnership, corporation, limited partnership, lim-
41 ited liability partnership, limited liability corporation, subchapter S
42 organization, or other fiduciary, shall be used either by such entity in
43 the event it is the taxpayer on behalf of such entity or by the
44 member, partner, shareholder, or beneficiary, as the case may be, in
45 proportion to their interest in such entity in the event that income,
46 deductions, and tax liability passes through such entity to such
47 member, partner, shareholder, or beneficiary. Such tax credits may

48 not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for the same conveyance.

50 (h) All or any tax credits which arise under this chapter from the 51 qualified donations of certified land by a married couple shall be 52 used only if the spouses file a joint return, if both spouses are 53 required to file Massachusetts income tax returns. If only one spouse 54 is required to file a Massachusetts income tax return, that spouse 55 may claim the credit allowed by this chapter on a separate return.

1 SECTION 5. Definitions.

2 Chapter 63 of the General Laws is hereby amended by adding the 3 following new section:—

4 Section 38U. As used in this section the following words shall 5 have the following meanings:—

6 (a) “Bargain sale,” the sale of an interest in real property by a tax- 7 payer at a cost below appraised market value, when a portion of the 8 value of the interest in real property is a qualified donation, as such 9 terms are defined herein, and which meets the requirements of 10 Section 1011(b) of the Internal Revenue Code of 1986, as amended.

11 (b) “Certified land” or “certified lands,” an interest in real prop- 12 erty, as defined herein, the donation or bargain sale of which, as 13 defined herein, has first been determined by the secretary of environ- 14 mental affairs to be in the public interest for natural resource protec- 15 tion, including, but not limited to, drinking water supplies, wildlife 16 habitat and biological diversity, agricultural and forestry production, 17 recreational opportunities, archaeological and historical resources, or 18 scenic and cultural values. The secretary of environmental affairs 19 shall assure that all certified lands are protected in perpetuity.

20 (c) “Interest in real property,” any right in real property in the 21 Commonwealth of Massachusetts, with or without improvements 22 thereon, or water, including, but not limited to, fee simple, life 23 estate, restriction, easement, covenant, condition, partial interest, 24 remainder, future interest, lease, license, mineral right, riparian right, 25 or other interest or right in real property that may be conveyed con- 26 cerning the power to transfer property.

27 (d) “Public or Private Conservation Agency,” the Commonwealth 28 of Massachusetts, or any subdivision thereof, or any municipality, or 29 private nonprofit corporation organized for the purposes of land con- 30 servation, which is authorized to do business in the Commonwealth

31 of Massachusetts, and which has tax-exempt status as a nonprofit
32 charitable organization as described in Section 501(c)(3) of the
33 Internal Revenue Code of 1986, as amended.

34 (e) "Qualified donation," a donation, or the donated portion of a
35 bargain sale, made in perpetuity of a fee interest in real property or a
36 less-than-fee interest in real property, including a conservation
37 restriction, agricultural preservation restriction or watershed preser-
38 vation restriction, pursuant to Chapter 184 of the general laws, pro-
39 vided that such less-than-fee interest meets the requirements of
40 Qualified Conservation Contributions under the Internal Revenue
41 Code of 1986, Section 170(h).

42 (f) "Taxpayer," a taxpayer subject to the income tax under this
43 chapter.

1 SECTION 6. Tax Credit Available.

2 Chapter 63 of the General Laws is hereby amended by adding the
3 following new section:—

4 (a) Land Conveyed for Conservation Purposes. A taxpayer
5 making a qualified donation of certified land to a public or private
6 conservation agency shall be allowed a credit against the taxes
7 imposed by this chapter. The credit shall be equal to 50 percent of
8 the fair market value of the qualified donation. The amount of the
9 credit that may be claimed by a taxpayer for each qualified donation
10 shall not exceed fifty thousand dollars.

11 (b) The fair market value of certified land shall be substantiated
12 by a Qualified Appraisal, as defined in United States Treasury Regu-
13 lation Section 1.170A-13(c)(3), and shall be prepared by a Qualified
14 Appraiser, as defined in United States Treasury Regulation Section
15 1.170A-13(c)(5). For any taxpayer to qualify for the credit provided
16 for in subsection (a) of this section, the taxpayer shall at the same
17 time as the taxpayer files a return for the taxable year in which the
18 credit is claimed, file with the department a summary of a Qualified
19 Appraisal, or if requested by said department, the taxpayer shall
20 submit the appraisal itself.

21 (c) In any one tax year the credit used may not exceed the amount
22 of tax liability otherwise owed by the taxpayer. The tax credit shall
23 be taken against the taxes imposed under this chapter and shall not
24 be refundable. Any amount of the credit that exceeds the tax due for

25 a taxable year may be carried forward by the taxpayer to any of the
26 10 subsequent taxable years.

27 (d) The tax credits provided by this chapter shall apply to trans-
28 fers of interests in real property in taxable years beginning on or
29 after January 1, 2008 and consecutive taxable years thereafter.

30 (e) All or any tax credits issued in accordance with this section
31 may be in addition to any charitable deductions claimed on the tax-
32 payer's federal income tax return for the same qualified donations of
33 certified lands.

34 (f) Any taxpayer claiming a state income tax or excise tax credit
35 under this section may not claim an additional state income tax
36 credit or deduction during any one tax year for costs related to the
37 same interest in certified lands.

38 (g) All or any tax credits which arise under this section from the
39 qualified donation of certified land by a pass-through tax entity such
40 as a trust, estate, partnership, corporation, limited partnership, lim-
41 ited liability partnership, limited liability corporation, subchapter S
42 organization, or other fiduciary, shall be used either by such entity in
43 the event it is the taxpayer on behalf of such entity or by the
44 member, partner, shareholder, or beneficiary, as the case may be, in
45 proportion to their interest in such entity in the event that income,
46 deductions, and tax liability passes through such entity to such
47 member, partner, shareholder, or beneficiary. Such tax credits may
48 not be claimed by both the entity and the member, partner, share-
49 holder, or beneficiary, for the same conveyance.

1 SECTION 7. Administration.

2 (a) The secretary of the executive office of environmental affairs
3 shall promulgate regulations that define land eligible for certification
4 under this Section 6 of Chapter 62 and under Section 38U of
5 Chapter 63. Regulations shall be promulgated within 180 days of
6 passage of these sections.

7 (b) The secretary of environmental affairs, within five years of
8 passage of this act, shall prepare a report to the joint committee on
9 revenue and the joint committee on environment, natural resources
10 and agriculture, describing the certified lands conserved under
11 Section 6 of Chapter 62 and Section 38U of Chapter 63.

12 (c) The commissioner of revenue, in consultation with the secre-
13 tary of the executive office of environmental affairs, shall

14 promulgate regulations to administer under Section 6 of Chapter 62
15 and Section 38U of Chapter 63. Such regulations shall include provi-
16 sions to prevent the generation of multiple credits with respect to the
17 same property. Regulations shall be promulgated within 180 days of
18 passage of this act.

19 (d) The commissioner, within five years of passage of this
20 chapter, shall prepare a report to the joint committee on revenue and
21 the joint committee on environment, natural resources and agricul-
22 ture, calculating the annual tax savings under Section 6 of Chapter
23 62 and Section 38U of Chapter 63.

24 (e) There shall be a commission to study the transferability of tax
25 credits under Section 6 of Chapter 62 and Section 38U of Chapter
26 63. The commission shall be composed of nine persons, including
27 the commissioner of the department of agricultural resources, or his
28 designee, who shall serve as chairman; the commissioner of the
29 department of revenue, or his designee; two members of the house of
30 representatives, to be appointed by the speaker of the house of repre-
31 sentatives; two members of the senate, to be appointed by the presi-
32 dent of the senate; a representative of the American Farmland Trust;
33 a representative of the Massachusetts Audubon Society; a represen-
34 tative of The Nature Conservancy. The commission shall examine all
35 aspects of transferability, including but not limited to:— the status of
36 its application in other states, potential fiscal impacts, and potential
37 conservation benefits. The commission shall file a report of its find-
38 ings and recommendations, including any drafts of legislation neces-
39 sary to put its recommendations into effect, with the joint committee
40 on revenue and joint committee on environment, natural resources
41 and agriculture on or before January 1, 2009.

1 SECTION 8. Construction.

2 Nothing in this act shall be interpreted in any way to alter or
3 amend any permitting requirements, reporting requirements, alloca-
4 tion procedures, or other requirements set forth in any other provi-
5 sion of the General Laws.